



## RESOLUTION

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PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), AS AMENDED, RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

WHEREAS, under the current LUO, transient vacation units ("TVUs") are permitted as of right in the Resort District and the Resort Mixed Use Precinct of the Waikiki Special District. TVUs also are permitted in the A-2 Medium Density District if they are within 3,500 feet of a Resort District of greater than 50 contiguous acres and the Resort District and the A-2 District were rezoned pursuant to the same zone change application as part of a master-planned resort community. TVUs are not allowed in any other zoning district; and

WHEREAS, Ordinance 89-154 established provisions that allowed TVUs located in zoning districts where they were no longer allowed to continue in operation if they were in existence prior to certain preceding dates and obtained a Nonconforming Use Certificate; and

WHEREAS, certain residential areas on Oahu have had long-term problems with illegal TVU operations, resulting in complaints to the City about noise, illegal parking, and other problems associated with such operations; and

WHEREAS, the Council feels that establishing a permitting process and standards for TVU operations will minimize the impact of TVUs in residential areas and result in a reduction of the problems associated with illegal TVU operations; and

WHEREAS, the Council attempted to address this problem in 2008 and 2009, when it considered bills relating to TVUs, but was unable to pass any legislation at that time; and

WHEREAS, the Council feels that because of the continuing problems with illegal TVU operations in residential neighborhoods, it is time to restart the discussion and once again attempt to address the problem; and

WHEREAS, the Council therefore desires to propose amendments to the LUO to allow TVUs in certain residential areas where they are currently prohibited, subject to certain permitting processes and operating standards; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended (RCH), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and



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## RESOLUTION

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WHEREAS, Revised Ordinances of Honolulu 1990, as amended (ROH), Chapter 2, Article 24, establishes procedures and deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting and the Planning Commission are directed, pursuant to Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended, and ROH Chapter 2, Article 24, to process the proposed amendment to Chapter 21, ROH 1990 (the Land Use Ordinance), attached hereto as Exhibit "A," in the same manner as if the proposal had been proposed by the Director; and

BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the Director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 15-86

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**RESOLUTION**

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BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk transmit copies of this Resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY:

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DATE OF INTRODUCTION:

**MAR 27 2015**

Honolulu, Hawaii

Councilmembers

## **EXHIBIT A**



## A BILL FOR AN ORDINANCE

RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend the Land Use Ordinance to establish transient vacation units as a conditional use in certain zoning districts subject to standards and restrictions, and to require a conditional use permit for the use. The standards and restrictions and the permitting process are intended to minimize the impact of transient vacation units in the zoning districts and maintain the integrity and character of such neighborhoods.

SECTION 2. Section 21-2.40-1, Revised Ordinances of Honolulu 1990, as amended ("Minor permits"), is amended by adding a new subsection (d) to read as follows:

"(d) Application and Processing for a Minor Permit for a Transient Vacation Unit.

- (1) Only the fee simple owner of record, or the lessee of record with more than 15 years remaining in the term of the lease at the time of permit application, of the real property proposed for a transient vacation unit is eligible for a conditional use permit (minor) for the transient vacation unit.
- (2) All permit applications must include:
  - (A) The name, address, and telephone number of the applicant and verification that the applicant is the owner or lessee of the real property. If the applicant is a lessee, the applicant must submit evidence that there are at least 15 years remaining in the term of the lease. If a proposed transient vacation unit will be managed by an operator, the name, address, and telephone number of the operator also must be provided;
  - (B) The tax map key number of the real property where the use will be conducted;
  - (C) A floor plan of the transient vacation unit.
- (3) An applicant seeking a permit for a transient vacation unit shall submit an application to the director for processing. The director shall number stamp the application and process it in the order in which it is received.



## A BILL FOR AN ORDINANCE

- (4) Notwithstanding Section 6-41.1(a)(8), the fee for a conditional use permit (minor) for a transient vacation unit is \$2,000. All fees for transient vacation unit permits, including all renewals thereof, are to be used for the department's regulation of transient vacation units.
- (5) Within 45 days of the director's acceptance of the completed application, the director shall:
- (A) Approve the application as submitted;
  - (B) Approve the application with modifications and/or conditions; or
  - (C) Deny the application and provide the applicant with a written explanation for the denial and required actions by the applicant necessary to obtain approval of the application. If the applicant makes the appropriate corrections and resubmits the application, the director shall act on the resubmitted application within 45 days as provided in this subdivision.

Provided, however, that if an applicant substantially amends an application after acceptance by the director, the director will have up to 45 days from the date of such amendment to act on the application as provided in this section.

If the director fails to take final action on the application prior to the deadline provided herein, it will be deemed approved and the director shall issue the permit to the applicant."

SECTION 3. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-2.150-3 to read as follows:

**"Sec. 21-2.150-3 Information required in advertisement for transient vacation unit—Notice and penalty.**

- (a) If any advertisement does not have the information required by Section 21-5.640A(n), the owner or the rental agent of the transient vacation unit being advertised shall, within seven business days of receiving such notice, terminate the dissemination of any advertisements that do not contain the required information, and shall, within seven business days of receiving such notice, take action to cure the violation. Failure to do so will subject the owner or rental agent to the civil fines provided in subsection (b).



## A BILL FOR AN ORDINANCE

(b) Any person violating this section is subject to the following civil fines:

- (1) For a first violation, an initial fine of \$1,000; and daily fines of \$1,000 per day until the violation is corrected;
- (2) For a second violation occurring within a twelve-month period, a fine of \$3,000; and daily fines of \$3,000 per day until the violation is corrected. Recurring violations occur when the previous violation has been corrected and a subsequent infraction of the same section occurs;
- (3) For a third violation occurring within a twelve-month period, an initial fine of \$5,000; and daily fines of \$5,000 per day until the violation is corrected.

Nothing in this subsection precludes the department from seeking any other remedy against a violator of this section.

(c) Except as otherwise provided in this section, the provisions of Section 21-2.150-2 apply to the administrative enforcement for violations of Section 21-5.640A(n)."

SECTION 4. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-2.150-4 to read as follows:

**"Sec. 21-2.150-4    Depository of fees and civil penalties relating to transient vacation units.**

Notwithstanding any other ordinance to the contrary, payments of fees and civil penalties relating to transient vacation units are to be deposited into a special account of the general fund, to be appropriately named by the department of budget and fiscal services, and used for expenses related to the regulation of such uses by the department."







## A BILL FOR AN ORDINANCE

continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.

- (c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.
- (d)] The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:
  - (1) between September 1, 2000 and October 15, 2000; then
  - (2) between September 1 and October 15 of every even-numbered year thereafter.

Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

- [(e)](c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use



## A BILL FOR AN ORDINANCE

certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.

- (d) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section, and any rental agent thereof, shall comply with the provisions of Sections 21-5.640A(n) and 21-2.150-3, relating to information required in advertisements for transient vacation units; provided that, instead of the permit number, the advertisement must include the number of the nonconforming use certificate.
- (e) The nonconforming use certificate will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a conditional use permit (minor) for a transient vacation unit pursuant to the requirements of this chapter. For purposes of this subsection, "transfer" does not include:
  - (1) The creation, modification, or release of a lien or encumbrance;
  - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
  - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;
  - (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or
  - (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant."

SECTION 7. Section 21-5.350, Revised Ordinances of Honolulu 1990, as amended ("Home occupations") is amended by amending subsection (i) to read as follows:

"(i) The following activities are not permitted as home occupations:



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## A BILL FOR AN ORDINANCE

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- (1) Automobile repair and painting. However, any repair and painting of vehicles owned by household members shall be permitted, provided that the number of vehicles repaired or painted shall not exceed five per year per dwelling unit. A household member providing any legal document showing ownership of an affected vehicle shall be deemed to satisfy this requirement.
- (2) Contractor's storage yards.
- (3) Care, treatment or boarding of animals in exchange for money, goods or services. The occasional boarding and the occasional grooming of animals not exceeding five animals per day shall be permitted as home occupations.
- (4) Those on-premises activities and uses which are only permitted in the industrial districts.
- (5) Use of dwellings or lots as a headquarters for the assembly of employees for instructions or other purposes, or to be dispatched for work to other locations.
- (6) Sale of guns and ammunition.
- (7) Mail and package handling and delivery businesses.
- (8) Use of the dwelling as a transient vacation unit."

SECTION 8. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended ("Specific Use Development Standards"), is amended by adding a new Section 21-5.640A to read as follows:

**"Sec. 21-5.640A    Transient vacation units.**

- (a) This section applies to transient vacation units in the residential and apartment districts; provided that it does not apply to transient vacation units in the A-2 medium density apartment district that are subject to Section 21-5.640.

- (b) As used in this section:

"Permit" means the conditional use permit (minor) for a transient vacation unit; and



## A BILL FOR AN ORDINANCE

"Owner" means the fee simple owner of record, or the lessee of record with more than 15 years remaining in the term of the lease at the time of application for the permit, of the real property used as a transient vacation unit.

- (c) The number of permits issued and outstanding pursuant to this section is limited as follows:
- (1) City-wide limit. The total number of permits in the city cannot exceed \_\_\_\_\_ percent of the total number of properties classified as residential by the director of budget and fiscal services pursuant to Section 8-2.2 for the 2014-2015 fiscal year. This 2014-2015 number will be the permanent city-wide limit for purposes of this subsection.
  - (2) Limit in each council district. The number of permits issued for properties located in each council district cannot exceed \_\_\_\_\_ of the city-wide limit established in subdivision (1). The council districts in existence on the effective date of this ordinance will hereafter be used for determining these limits, notwithstanding subsequent reapportionment.
  - (3) Applications received after the applicable permit limits have been reached will be placed on a waiting list and be eligible for processing in the order received.
- (d) The permit for the transient vacation unit must be in the name of the owner. If the applicant is a lessee, the applicant shall provide written authorization from the lessor allowing the unit to be used as a transient vacation unit.
- (e) The owner must hold a current transient accommodations tax (TAT) license and a general excise tax (GET) license for the transient vacation unit in his or her name.
- (f) The owner must qualify for and have been allowed a real property tax exemption by the department of budget and fiscal services pursuant to Section 8-10.4 for a property other than the real property used as a transient vacation unit.
- (g) An owner may not hold more than one permit at one time.
- (h) Section 21-2.90-2(c) and Section 21-7.40(c) and (d) notwithstanding, there can be no exterior signage that advertises or announces that the dwelling is used as a transient vacation home.



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## A BILL FOR AN ORDINANCE

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- (i) Section 21-2.90-2(c) notwithstanding, off-street parking spaces must be provided for all guest vehicles at the transient vacation unit. Tandem parking is acceptable and the parking area may be composed of natural materials in order to preserve the natural appearance.
- (j) The permit will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a permit for a transient vacation unit pursuant to the requirements of this chapter. For purposes of this subsection and subsection (i), "transfer" does not include:
  - (1) The creation, modification, or release of a lien or encumbrance;
  - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
  - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;
  - (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or
  - (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant.
- (k) The owner shall, within 14 business days, notify the director in writing of the transfer of any interest in the transient vacation unit.
- (l) The transient vacation unit must be operated in accordance with the following standards:
  - (1) Within ten days of the issuance of the permit, the owner shall provide his or her name and contact telephone number to the residents on all adjoining properties. The owner shall provide proof of such notification to the director within 30 days after issuance of the permit.
  - (2) The owner shall maintain a register setting forth the names of all guests, the dates of their respective stays, and the year, make, model, and license



## A BILL FOR AN ORDINANCE

plate number of the vehicles used by the guests. The register must be preserved for the term of the permit and until such time as the permit is renewed or is terminated. The owner shall provide the director, the director's authorized agent, or the police department with access to the register upon request.

- (3) The owner shall post the current permit in the interior of the transient vacation unit.
- (4) The owner shall establish and enforce written house rules, include the rules in the guest rental agreement, and post the rules in a prominent location in the transient vacation unit. The rules must, at a minimum:
  - (A) Require that all guest vehicles be parked on the premises; and
  - (B) Prohibit any activity or noise that disrupts the peace and quiet of the neighborhood, particularly between the hours of 10:00 p.m. and 7:00 a.m.

A copy of the house rules must be submitted with the application for the permit or any renewal thereof.

- (5) The owner shall comply with all applicable provisions of the Fire Code.
- (m) The owner shall respond to any complaint received from neighboring residents regarding the operation of the transient vacation unit within two hours after receipt of the complaint. The owner shall maintain a log of every complaint received from neighboring residents, including the name and address of the neighbor, the date and time of the complaint, a detailed description of the complaint, and a detailed description of the response to the complaint. The owner shall keep the neighbor informed as to how the complaint was handled. The owner shall provide access to the complaint log to the director or the director's authorized agent upon request.
- (n) The owner shall grant access to the transient vacation unit to the director or the director's authorized agent, upon 24 hours prior written notice delivered to the owner, for purposes of inspecting the premises to ensure compliance with this section or any permit condition.
- (o) Advertisements.



## A BILL FOR AN ORDINANCE

(1) Information required: The owner and any rental agent thereof, shall include, in all advertisements for occupancy of the unit, the permit number of the transient vacation unit. For the purpose of this subsection and Section 21-2.150-3:

(A) "Advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by or at the direction of the owner of a transient vacation unit in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and through the internet; and

(B) "Rental agent" means any person who lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a transient vacation unit owned by another person.

(2) Prima facie evidence. The existence of an advertisement for a transient vacation unit will be prima facie evidence of the following:

(A) That the owner of the advertised unit disseminated or directed the dissemination of the advertisement in that form and manner, regardless of whether the advertisement bears the name, business address, or service mark of the rental agent; and

(B) That a transient vacation unit is being operated at the listed address.

The burden of proof shall be on the owner to establish otherwise with respect to the advertisement and that the subject property either is not being used as a transient vacation unit or that it is being used legally for such purpose.

(p) The owner, employees of the owner, licensed travel agents, and licensed real estate agents may advertise the transient vacation unit or make reservations on behalf of the owner, or both.

(q) Permit expiration and renewal.

(1) The permit expires two years after issuance, unless revoked prior to expiration. If a permit is suspended, time will continue to run for measuring the period of that permit's validity.



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## A BILL FOR AN ORDINANCE

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- (2) Not more than 90, but not less than 45 days before the expiration of a permit, the owner may apply for a renewal of the permit on an appropriate application form provided by the director. The renewal will be subject to the same requirements as an application for a new permit. The renewal application must be accompanied by satisfactory evidence, such as a tax clearance certificate signed by the State of Hawaii director of taxation, showing that the owner does not owe the State of Hawaii any delinquent general excise taxes, transient accommodations taxes, penalties, or interest, in connection with operation of the transient vacation unit.
- (3) A grace period of not less than 30 days will be granted for an owner who does not renew his or her permit by its expiration date, during which period the transient vacation unit permit will continue in full force and effect. The owner shall pay a late fee of \$100 in addition to any renewal fees.
- (4) The renewal application must be accompanied by a renewal fee that is the same as the fee for a new permit application.
- (5) The following may be grounds for nonrenewal of the permit:
- (A) Violation of any provision of this section;
  - (B) Violation of any permit condition; or
  - (C) Violation of any other city ordinance, or state or federal law;
- during the term of the previous permit, regardless of whether the violation has been corrected at the time of the application.
- (r) Revocation or suspension of permit.
- The director may revoke or suspend a permit for good cause, including but not limited to:
- (1) Violation of this article;
  - (2) Violation of any permit condition;
  - (3) Violation of any other city ordinance, or state or federal law; or





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## A BILL FOR AN ORDINANCE

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- (4) Misrepresentations, or willful, substantial omissions of material facts in the permit application.

The director shall provide the owner written notice of a revocation or suspension decision, stating the grounds for the suspension or revocation. The suspension or revocation takes effect ten days following the receipt of notice of the revocation or suspension, unless a timely appeal has been filed."

SECTION 9. Ordinance material to be deleted or repealed is bracketed. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material, or the underscoring. The revisor of ordinances shall, pursuant to the revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.

SECTION 10. The Council is aware that at the time it considers this bill for final approval, there may be other bills that were given final Council approval but were not enacted as ordinances, and that amend the same provisions of the Revised Ordinances of Honolulu as this bill. If this bill is enacted as an ordinance, the revisor of ordinances shall give maximum effect to all amendments to the Revised Ordinances of Honolulu made by this bill and any other bill situated as described above. The absence in this bill of amendments made in those other bills is not to be construed as a repeal of the amendments made in those bills.

SECTION 11. An owner, operator, or proprietor of a transient vacation unit who holds a valid and current nonconforming use certificate issued pursuant to Section 21-4.110-1 on the effective date of this ordinance will be allowed to continue to operate the transient vacation unit pursuant to Section 21-4.110-1, as amended. The owner, operator, or proprietor of the transient vacation unit shall cease its operation upon the expiration and nonrenewal of the nonconforming use certificate, provided that the owner may thereafter apply for a conditional use permit (minor) for a transient vacation unit pursuant to the provisions Chapter 21.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

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**A BILL FOR AN ORDINANCE**

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SECTION 12. This ordinance takes effect 180 days after its approval, provided that the following takes effect upon approval:

Within 90 days of the enactment of this ordinance, the director shall mail notice of the enactment of this ordinance and of Section 11 thereof to all holders of a current nonconforming use certificate for a transient vacation unit.

INTRODUCED BY:

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DATE OF INTRODUCTION:

\_\_\_\_\_  
Honolulu, Hawaii

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Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
KIRK CALDWELL, Mayor  
City and County of Honolulu